United States Court of Appeals

for the Second Circuit

INTERVENOR'S BRIEF

76-4147

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

AAACON AUTO TRANSPORT, INC.,

Petitioner,

v.

INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA,

Respondents.

No. 76-4147

B
P/S

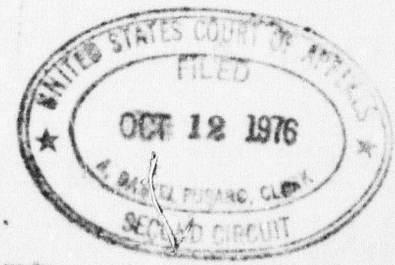
ON PETITION FOR REVIEW OF AN ORDER OF THE INTERSTATE COMMERCE COMMISSION

BRIEF OF INTERVENING RESPONDENTS F. J. BOUTELL DRIVEAWAY CO., INC., AND NU-CAR CARRIERS, INC.

WILMER B. HILL,
Attorney for Intervening Respondents.

OF COUNSEL:
AMES, HILL & AMES, P.C.
805 McLachlen Bank Building
666 Eleventh Street, N.W.
Washington, D.C. 20001
202-628-9243

DATED AT:
Washington, D.C.
October 13, 1976



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IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

AAACON AUTO TRANSPORT, INC.,	)	
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v.	)	No. 76-4147
	)	
INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA,	)	
	)	
Respondents.	)	

ISSUES PRESENTED FOR REVIEW

1. Whether the findings of respondent Interstate Commerce Commission (Commission) that petitioner Aaacon Auto Transport, Inc. (Aaacon) has engaged in unjust and unreasonable practices in connection with matters relating to authorized transportation services, in violation of sections 20(11), 219, and 216(b) of the Interstate Commerce Act (Act), are based on substantial evidence, and are not arbitrary nor erroneous as a matter of law.

2. Whether the findings of the Commission that Aaacon has performed operations not authorized by its certificate of public convenience and necessity, in violation of section 206(a) of the Act, are based on substantial evidence, and are not arbitrary nor erroneous as a matter of law.

3. Whether the findings of the Commission that Aaacon's petition for a declaratory order should be denied for the reason that the restriction contained in Certificate No. MC-125808 (Sub-No. 1), restricting the authority set forth therein against the transportation of traffic to automobile dealers, is clear and unambiguous and serves a useful purpose, are not arbitrary or capricious, nor erroneous as a matter of law.

4. Whether the findings of the Commission that applicant Auto Trip USA, Inc., has failed to establish that it is a qualified applicant or that its proposed operation will be consistent with the public interest and the national transportation policy, are based on substantial evidence, and are not arbitrary nor erroneous as a matter of law.

STATEMENT OF THE CASE

I. Nature of the case.

We subscribe to and adopt the petitioner's statement of the nature of the case, as set forth on page 2 of its opening brief.

II. Course of the proceedings.

With one exception we also adopt the petitioner's statement of the course of the proceedings. On page 3 of its opening brief the petitioner makes the following statement:

> Thereafter Aaacon withdrew its supplementary motor carrier application in MC-125808 (Sub-No. 2) because its file had been "red flagged,"3/ and the Commission proceeded to hearings on all the other pending dockets.

Aaacon did not withdraw this application. By order of the Commission dated May 4, 1971, the proceeding was reopened for further consideration of the fitness of the applicant subsequent to final determination of No. MC-C-7287. By order dated April 7, 1976, a copy of which is attached hereto as Appendix A, the Commission concluded that Aaacon could not be found fit, and, therefore, denied the application.

III. Disposition below.

We adopt the statements of petitioner under paragraphs B. and C. on page 4 of its opening brief. However, as to paragraph A., the petitioner has colored the conclusions and findings of the Commission to suit its own purposes. What the Commission has said is that Aaacon must continue to respect the restriction in its certificate which prohibits the movement of traffic to automobile dealers. It is as plain and simple as that.

We would further add that petitioner here, and respondent before the Commission, sought to have the Commission stay the effect of its order entered April 7, 1976, pending judicial review. By order dated July 15, 1976, and served July 19, 1976, a copy of which is attached hereto as Appendix B, the Commission denied the petition for stay.

IV. In this Court.

On or about June 18, 1976, Aaacon filed its petition for review of the Commission's order in No. MC-C-7287,

Aaacon Auto Transport, Inc. - Investigation and Revocation of Certificate, No. MC-C-7287 (Sub-No. 1), Aaacon Auto Transport, Inc., Petition for Declaratory Order, and No. FF-359, Auto Trip USA, Inc., Freight Forwarder Application, decided April 7, 1976, and served April 19, 1976.[1/]

On or about July 29, 1976, a motion for leave to intervene in support of respondents was filed on behalf of F. J. Boutell Driveaway Co., Inc. (Boutell), and Nu-Car Carriers, Inc. (Nu-Car). Both were parties to the subject proceeding before the Commission. By corrected order dated August 16, 1976, this motion was granted.

Petitioner's opening brief was filed on September 13, 1976, and respondents' briefs are due on October 13, 1976. The matter will come on for oral argument the week of October 26, 1976.

V. Statement of facts relevant to the issues.

For the most part we would adopt petitioner's statement of facts. Additionally, it should be noted that when Aaacon prosecuted its application[2/] which ultimately resulted in the issuance of its present certificate, it voluntarily amended said application so as to restrict itself against the movement of traffic to automobile dealers. This in turn resulted in the withdrawal of opposition by Boutell and Nu-Car, inter alia.

1/ 124 M.C.C. 493 (1976).
2/ No. MC-125808 (Sub-No. 1), Aaacon Drivers Exchange, Inc., Common Carrier Application, 102 M.C.C. 393 (1966).

When Aaacon filed its Sub-2 application for extension of operating rights in 1968, the Commission proceeded to modify its existing certificate, but saw fit to retain the restriction against traffic moving to automobile dealers.[3/] As stated above this application was denied earlier this year because Aaacon could not be found fit to conduct the proposed operations.

SUMMARY OF ARGUMENT

There is no issue here as to jurisdiction and venue. It is the position of your intervening respondents that Aaacon's petition for review should be denied because the Commission's order under attack is fully supported by the evidence of record and the law applicable thereto. Each of the issues presented for review herein must be answered in the affirmative. In its opening brief petitioner has shown no good reason why the relief sought should be granted. It is our intention to limit our argument to two points. The first will be the function of the reviewing court in this type of appeal. Secondly, we will address ourselves to the third issue presented for review above. The Commission's findings with respect to Aaacon's petition for a declaratory order should not be disturbed by this court. The petitioner has had a full hearing before the Commission, an administrative agency with expertise in the field of surface transportation. It has had full opportunity to present

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3/ 337 I.C.C. 570, 582 (1970).

evidence and adduce argument in support thereof. In turn the Commission has given all reasonable consideration to the proceeding. Even after the comprehensive report and order of Division 1 of the Commission, decided April 7, 1976 and served April 19, 1976, Aaacon petitioned for reconsideration, and this was denied by order of Division 1, Acting as an Appellate Division, dated July 12, 1976 and served July 13, 1976. A copy of said order is attached hereto as Appendix C.[4/]

ARGUMENT

I. Function of the reviewing court.

It should first be noted that orders of the Interstate Commerce Commission, like those of other Federal administrative agencies, come to the reviewing court clothed with a presumption of validity. Petitioners as here have the burden of proving invalidity. The findings of the Commission are to be given great weight where its expertise is involved. Allegheny Ludlum Steel Corp. v. United States, 325 F. Supp. 352, 354-355 (1971). It is difficult to imagine an area where the expertise of the Commission would come more into play than certificate interpretation. At 124 M.C.C. 508 the Commission had this to say:

> The restriction was imposed to protect the interests of motor carriers engaged in the transportation of vehicles to auto dealers, and to define the nature of the service authorized by Aaacon's Certificate No. MC-125808 (Sub-No. 1). We believe that Aaacon's and

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4/ It is noted that Boutell and Nu-Car did not file a reply to Aaacon's latest petition. This is because they were not served with a copy thereof. In this respect see our letter of June 18, 1976, attached hereto as Appendix D.

> Auto Trip's contention that the restriction is vague, ambiguous, or illegal is(sic) without merit; that the Administrative Law Judge properly found that the restriction is clear on its face and unambiguous, and, therefore, he properly denied the relief sought in Aaacon's petition for declaratory order, as set forth in No. MC-C-7287 (Sub-No. 1), and embraced herein, and the relief sought therein will be denied.

See also Interstate Commerce Commission v. City of New Jersey, 322 U.S. 503, 512 (1943).

Commencing with the classic formulation of the United States Supreme Court in Interstate Commerce Commission v. U.P.R.R. Co., 222 U.S. 541, 547 (1912), it has been firmly established that the Commission's determination must be upheld if it is based on substantial evidence and is not arbitrary nor erroneous as a matter of law. The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body. Rochester Telephone Corp. v. United States, 307 U.S. 125, 146 (1939). The judicial task is to determine whether the Commission has proceeded in accordance with law and whether its findings and conclusions accord with statutory standards and are supported by substantial evidence. Penn-Central Merger Cases, 389 U.S. 486, 499 (1968). When reviewing the record the court should give special deference to the Commission's expertise in its exclusive area. Interstate Commerce Commission v. J-T Transport Co., 368 U.S. 81 (1961); and Burlington Truck Line v. United States, 371 U.S. 156 (1962).

The scope of review is even more limited when the Commission's interpretation of its own certificate is under

attack. It is well established that such interpretation will not be overturned by the courts unless arbitrary or clearly erroneous. Service Transfer Co. v. Virginia, 359 U.S. 171, 177-178 (1959); Andrew G. Nelson, Inc. v. United States, 355 U.S. 554, 558 (1958), reh. den. 356 U.S. 934 (1958); and Malone Freight Lines, Inc. v. United States, 107 F. Supp. 946, 949 (N.D. Ala. 1952), aff'd per curiam, 334 U.S. 925 (1948).

Petitioner is asking this court to find that the Commission erred in concluding that a restriction which it placed in one of its certificates is clear and unambiguous. Who could better know whether such a restricion is acceptable and proper than the very agency which must deal with such matters on a daily basis.

II. Propriety of Commission findings in No. MC-C-7287 (Sub-No. 1).

Aaacon earlier agreed to have its interstate operating rights restricted against the transportation of traffic to automobile dealers. This was done to remove a particular field of service from its operations. The result was to protect the interests of other regulated carriers such as Boutell and Nu-Car. It was the stated intention of Aaacon to perform a casual driveaway type of operation. If properly restricted such an operation would not tread on the toes of the long-established transporters of motor vehicles whose efforts are largely directed to commercial shippers.

However, there came a time when Aaacon was not content to restrict its activities as required by its certificate. It acquired a taste for the more voluminous commercial traffic. To broaden its operations it filed a petition for a declaratory order which if granted would enable it, under certain conditions, to handle traffic to automobile dealers. It attacked the restriction to which it had agreed and which the Commission placed in its certificate as vague, ambiguous, and illegal. The Commission properly found that it is none of these, and this court should not disturb such a finding.

While we agree with the general proposition that a restriction in a certificate must be narrowly construed this does not excuse the refusal of Aaacon to recognize the clear meaning of the restriction here in issue. Aaacon would have the Commission look beyond its certificate to determine what traffic may be handled. There is no basis for any such relief. The cardinal rule for construing the terms of a certificate is that the certificate must speak for itself. T. I. McCormack Trucking Co., Inc. - Investigation, 89 M.C.C. 5 (1962). This has been consistently followed in cases before the Commission. For example, in Great Northern v. Stendal Transp. and Elmer's Exp., 110 M.C.C. 35, 39 (1969), the Commission had this to say:

> The cardinal rule in interpreting motor carrier authority is that the carrier's certificate or permit must speak for itself. Consideration may ordinarily be given to the circumstances surrounding the grant of such authority only if the authority itself is patently

> indefinite or ambiguous. Sims M. Transport Lines, Inc., Revocation of Certificate, 66 M.C.C. 553, 556. The Commission may also correct errors of a ministerial nature. American Trucking Assns. v. Frisco Transp. Co., 358 U.S. 133. Absent these, operating rights must be construed according to their terms regardless of what may have been intended at the time of their issuance. This result is followed regardless of whether the practical effect is to confer more or less authority than what may have been intended to be granted originally.

Any other rule would contribute an intolerable uncertainty to the finality of any right granted. Manhattan Coach Lines, Inc. v. Adirondock Transit Lines, 42 M.C.C. 123 (1943).

Petitioner would like to have this court hold that there is a patent ambiguity in the term "automobile dealer." We respectfully submit that there is no such ambiguity. An automobile dealer is just that regardless of why the car is being transported to him. It may be for purposes of normal showroom sale, for auction, for warehousing, for repair, etc. The only question is whether it does in fact move to an automobile dealer.

Another argument of petitioner is that the restriction is objectionable because its use today would be contrary to public policy. The main thrust of this argument seems to be that the Commission's decision in Fox-Smythe Transportation Co. Extension - Oklahoma, 106 M.C.C. 1 (1967), would now prohibit employment of such a restriction. The Commission used the Fox-Smythe proceeding to discuss the acceptability of various types of restrictions. There is nothing in the language of that decision which would rule out the restriction

we have here. As a matter of fact, the Commission has used the "automobile dealers" restriction subsequent to the Fox-Smythe decision. The Commission decision on Aaacon's Sub-2 application was entered on August 25, 1970, and contained a restriction against the transportation of traffic to automobile dealers. Also, in Dominick Spinelli Common Carrier Application, 107 M.C.C. 799, 810 (1968), the Commission utilized the same restriction. Here again the decision post-dated Fox-Smythe.

The argument that the restriction in issue would limit Aaacon to a particular class of shippers is specious at best and hardly deserving of discussion by the Commission. The case cited by petitioner in support of this proposition bears a date of 1943 and may have then properly set forth the Commission's policy. However, since that time the Commission has issued literally thousands of common carrier certificates which limit the holder to a service either to or from the plantsite of a particular shipper. This is far more restrictive than what we have here. This is perhaps the weakest of all petitioner's arguments.

Petitioner also asks that the Commission be guided by the policy determination it made in Nationwide Auto Transporters, Transferee, 116 M.C.C. 8 (1971), regarding driveaway service from manufacturers to dealers. That decision would be significant only if your intervening respondents restricted their interest to this one type of traffic. While shipments from manufacturers may account for the preponderance of their

traffic there has been no showing that this is the only type of traffic they seek to protect. Under these circumstances there was no reason for the Commission to have discussed Aaacon's petition in this context.

We would like to close this argument with a few observations generally concerning the position of petitioner. Few if any parties who do not prevail in proceedings before the Commission find its handling of their particular proceeding to their liking. Aaacon, like others before it, argues that certain contentions which it raised before the Commission have not received the consideration which they deserve. In deciding its cases the Commission cannot devote lengthy discussion to every point raised by every party. If this were the requirement the so-called regulatory lag would be severely worsened. The Commission is not obligated to make comprehensive findings of fact. United States v. Baltimore & O. R. Co., 293 U.S. 454, 465 (1935). So long as the essential findings are made, the Commission is not compelled to annotate to each finding the evidence supporting it. United States v. Pierce Auto Freight Lines, Inc., 327 U.S. 515 529 (1945). Failure to discuss all the testimony or arguments presented by parties or to disclose the mental process through which the decision was reached is no basis for invalidating a Commission order. Caravelle Express, Inc. v. United States, 287 F. Supp. 585 (D. Neb. 1968).

In Stott v. United States, 166 F. Supp. 851, 852 (S.D. N.Y. 1958), the court said:

There is no requirement in the Administrative

> Procedure Act, or otherwise, that the Commission discuss every piece of evidence in a record . . . as establishing the fact which a party claims it to have proved, or as persuasive on an issue of fact. Such a requirement would only lead to decisions of inordinate length and complexity and would serve to confuse the issues rather than clarify them.

See also Minneapolis & St. Louis R. Co. v. United States, 361 U.S. 173, 193-194 (1959), and Alabama G. S. R. Co. v. United States, 340 U.S. 216, 227-228 (1951).

Petitioner has little standing to challenge the Commission's treatment of the issues in this proceeding. Whenever possible it attempted to throw up road-blocks to an expeditious determination of the issues. Its conduct at times almost bordered on contemptuous. It was necessary for the Commission to admonish petitioner to refrain from such practices in the future.[5/]

CONCLUSION

For the foregoing reasons the petition for review of the Commission's order in MC-C-7287 et al., should be denied.

Respectfully submitted,

F. J. BOUTELL DRIVEAWAY CO., INC.,
NU-CAR CARRIERS, INC.,
Intervening Respondents,

By WILMER B. HILL, Wilmer B. Hill
Their Attorney.

OF COUNSEL:
AMES, HILL & AMES, P.C.
805 McLachen Bank Building
666 Eleventh Street, N.W.
Washington, D.C. 20001
202-628-9243

DATED AT:
Washington, D.C.
October 13, 1976

5/ 124 M.C.C. 502, 503 (1976).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the following parties of record, by forwarding copies thereof to each such party by first-class mail:

Lloyd J. Osborn, Esq.
Room 3410
Department of Justice
Washington, D.C. 20530

Kenneth Caplan, Esq.
Office of the General Counsel
Interstate Commerce Commission
Washington, D.C. 20423

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Daniel B. Johnson, Esq.
Munsey Building
Washington, D.C. 20004

Eugene C. Ewald, Esq.
110 West Long Lake Road
Suite 102
Bloomfield Hills, Michigan 48013

Dated at Washington, D.C., this 8th day of October, 1976.

Wilmer B. Hill

APPENDIX A

SERVICE DATE

APR 19 1976

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 7th day of April, 1976.

No. MC-125808 (Sub-No. 2)

AAACON AUTO TRANSPORT, INC., EXTENSION--
DRIVEAWAY FOR PRIOR RAIL MOVEMENTS

It appearing, That in the above-entitled proceeding a need was found for the service proposed therein but, by order of May 4, 1971, the proceeding was reopened for further consideration of the fitness of the applicant subsequent to final determination of No. MC-C-7287;

It further appearing, That after investigation of the matters and things involved in the proceeding in No. MC-C-7287, AAACon Auto Transport, Inc.--Investigation and Revocation of Certificate, which was handled on a consolidated basis with No. MC-C-7287 (Sub-No. 1), AAACon Auto Transport, Inc., Petition for Declaratory Order and No. FF-359, Auto Trip USA, Inc., Freight Forwarder Application, we issued a report and accompanying order which found AAACon to have been engaged in unjust and unreasonable practices in connection with matters relating to the transportation of automobiles, in driveaway service, in interstate or foreign commerce, in violation of sections 20(11), 219, and 216(b) of the Interstate Commerce Act, and to have performed operations not authorized by its certificate in violation of section 206(a) of the act and the terms, conditions, and limitations of the said certificate (No. MC-125808 (Sub-No. 1)) and which ordered respondent to cease and desist from such unjust and unreasonable practices and such unlawful operations;

It further appearing, That in the said report in No. MC-C-7287 et al., we concluded that the record in that proceeding revealed that the management of AAACon and its wholly owned subsidiary, Auto Trip USA, Inc., is not willing and able to comply with the appropriate laws, rules, and regulations and that were an application of AAACon's before us in that proceeding we would have found AAACon to be unfit therein; and

APPENDIX B

AMES, HILL & AMES, P.C.

JUL 20 1976

WASHINGTON, D. C.

SERVICE DATE

JUL 19 1976

ORDER

INTERSTATE COMMERCE COMMISSION

No. MC-C-7287

AAACON AUTO TRANSPORT, INC.-INVESTIGATION AND REVOCATION OF CERTIFICATE

No. MC-C-7287 (Sub-No. 1)

AAACON AUTO TRANSPORT, INC., PETITION FOR DECLARATORY ORDER (New York, N.Y.)

No. FF-359

AUTO TRIP USA, INC., FREIGHT FORWARDER APPLICATION (New York, N. Y.)

IN THE MATTER OF A STAY PENDING JUDICIAL REVIEW

PRESENT: George M. Stafford, Chairman, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the records in the above-entitled proceedings, and of petition of respondent in Nos. MC-C-7287 and MC-C-7287 (Sub-No. 1) and applicant in No. FF-359, filed June 22, 1976, for stay of the effect of the order of the Commission, entered April 7, 1976, pending judicial review; and

It appearing, That the petition does not present sufficient reasons to warrant a stay of the Commission's April 7, 1976, order pending judicial review, and good cause appearing therefor:

It is ordered, That the petition for stay be, and it is hereby, denied, and that the statutory effective and compliance date of said order of April 7, 1976, as previously extended, remains fixed as August 3, 1976.

Dated at Washington, D. C., this 15th day of July, 1976.

By the Commission, Chairman Stafford.

ROBERT L. OSWALD,
Secretary.

(SEAL)

APPENDIX C

SERVICE DATE

JUL 13 1976

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, Acting as an Appellate Division, held at its office in Washington, C. C., on the 12th day of July , 1976.

No. MC-C-7287

AAACON AUTO TRANSPORT, INC.
INVESTIGATION AND REVOCATION OF CERTIFICATE

No. MC-C-7287 (Sub-No. 1)

AAACON AUTO TRANSPORT, INC.,
PETITION FOR DECLARATORY ORDER
(New York, N. Y.)

No. FF-359

AUTO TRIP USA, INC.
FREIGHT FORWARDER APPLICATION
(New York, N. Y.)

Upon consideration of the records in the above-entitled proceedings, and of:

(1) Joint petition of respondent in Nos. MC-C-7287 and MC-C-7287 (Sub-No. 1) and applicant in No. FF-359, filed April 12, 1976, for reopening the proceeding for the receipt of tendered supplemental evidence;

(2) Reply by Auto Driveway Company, intervener, filed April 29, 1976, to the petition in (1) above;

(3) Joint petition of respondent in Nos. MC-C-7287 and MC-C-7287 (Sub-No. 1) and applicant in No. FF-359, filed May 19, 1976, for reconsideration, and stay of the effective date of the order of Division 1 of April 7, 1976, in the above-entitled proceedings;

(4) Reply by the Bureau of Enforcement, Interstate Commerce Commission, filed June 7, 1976, to the petition in (3) above;

(5) Reply by Auto Driveaway Company, intervener, filed June 8, 1976, to the petition in (3) above;

(6) Joint reply by National Automobile Transporters Association, Automobile Transport, Inc., Baker Driveaway Company, Inc., Dealers Transit, Inc., Kenosha Auto Transport Corporation, M & G Convoy, Inc., Gate City Transport Co., and Square Deal Cartage Co., protestants and intervenors, filed June 8, 1976, to the petition in (3) above;

and good cause appearing therefore:

It is ordered, That the petitions in (1) and (3) above, and the tendered evidence in (1) above, be and they are hereby denied

APPENDIX D

HARRY C. AMES 1890-1966
HARRY C. AMES, JR.
WILMER B. HILL
E. STEPHEN HEISLEY

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WILMER A. HILL
OF COUNSEL

June 18, 1976

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

ATTENTION: Mr. Michael Erenberg, Assistant Deputy Director, Section of Operating Rights, Office of Proceedings

RE: Docket No. MC-C-7887 et al.
Aacon Auto Transport, Inc., Investigation and Revocation of Certificate, et al.

Dear Sir:

We represent F. J. Boutell Driveaway Co., Inc., and Nu-Car Carriers, Inc., as protestants and intervenors in the above-docketed proceedings. By date of May 19, 1976, a petition for reconsideration was filed in behalf of respondent and applicant. A copy of said petition was not received by this office in due course. After we received replies which were filed by other parties counsel for respondent and applicant, Morton E. Kiel, Esquire, was contacted and agreed to mail a copy of the petition to us. It was received on June 14, 1976.

We have now had the opportunity to review Mr. Kiel's petition and the various replies already filed. Rather than further prolong an already aged proceeding we would respectfully request that we be permitted to adopt the reply filed in behalf of National Automobile Transporters Association and some seven individual motor carrier members by Eugene C. Ewald, Esquire, as the reply of Boutell and Nu-Car. The position of Boutell and Nu-Car is precisely the same as that of Mr. Ewald's clients.

Very truly yours,

Wilmer B. Hill

WBH:tdm

cc: Morton E. Kiel, Esquire
Eugene C. Ewald, Esquire
Daniel B. Johnson, Esquire
John F. Curley, Esquire
Mr. J. P. Skipworth
Mr. L. A. Potts, Jr.